IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

Bail Appl..No. 5070 of 2007()

CRMP.3110/2007 of DISTRICT COURT, THODUPUZHA
CRIME NO.305/05 OF SANTHANPARA POLICE STATION, IDUKKI.

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: PETITIONER/ACCUSED IN CRIME NO.305/2005:

ARUNACHALAM, AGED 42 YEARS,
S/O. PICHA ACHARI, RESIDING AT GUNDUMALA,
76 LAYAM, SOORYANELLI KARA, CHINNAKKANAL VILLAGE,
IDUKKI DISTRICT.

BY ADV. SMT.NAINA RAJI NAIR
SRI.M.J.JOHNSON

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A.NO. 5070 OF 2007

Dated this the 20th day of August, 2007

ORDER

Application for anticipatory bail. The petitioner was allegedly found to be in possession of 1 litre of arrack on 6/11/05. Investigation is now complete. Final report has already been filed. The petitioner was not arrested in the course of investigation. Cognizance has been taken. Committal proceedings have been registered. Coercive processes have been issued against the petitioner. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The petitioner may be granted anticipatory bail, it is prayed.

3. This application is opposed by the learned Public Prosecutor. The learned Public Prosecutor submits that no

circumstances justifying the invocation of the discretion under Sec.438 of the Cr.P.C. The petitioner may be directed to surrender before the learned Magistrate and seek regular bail in the ordinary course, submits the learned Public Prosecutor.

4. I have considered all the relevant inputs. After the decision in **Bharat Chaudhary and another v. State of Bihar (**AIR 2003 SC 4662), it is by now trite that powers under Sec.438 of the Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

5. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision

reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

6. In the result, this application is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge